**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CRIMINAL APPLICATION No. 894 of 2007**

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MARIYAMBEN ABDULBHAI MANSURI & 1 - Applicant(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
MR RAKESH R PATEL for Applicant(s) : 1 - 2.
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR CHIRAG M PAWAR for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 23/08/2007**

**ORAL JUDGMENT**

1. Leave to amend granted.

2. Rule. Shri K.T.Dave, learned APP waives service of rule on behalf of the respondent No.1 – State

and Shri Chirag Pawar, learned advocate waives service of rule on behalf of the respondent No.2. With the consent of the learned advocates appearing on behalf of the respective parties, this matter is taken up for final hearing today.

3. By way of this petition under Article 227 of the Constitution of India, the petitioners – original applicants have prayed for an appropriate writ, direction and/or order quashing and setting aside the order dated 6.2.2007 passed by the learned Additional Sessions Judge, Ahmedabad (Rural) in Criminal Revision Application No.89 of 2006 as well as the order dated 11.9.2006 passed by the learned JMFC, Dholka passed below Exh.27 passed in Criminal Misc. Application No.322 of 2005.

4. The petitioners are the original applicants, who submitted application before the learned JMFC, Dholka under section 125(3) of the Criminal Procedure Code being Criminal Misc. Application No.322 of 2005 for an appropriate order

directing the respondent No.2 herein to make the payment of maintenance due and payable as per the order passed by the learned JMFC, Dholka passed in Criminal Misc. Application No.242 of 1997. It appears that the petitioners submitted application under section 127 of the Criminal Procedure Code before the learned JMFC, Dholka being Criminal Misc. Application No.242 of 1997 and the learned JMFC, Dholka passed an order awarding maintenance at the rate of Rs.500/- per month w.e.f. 4.11.1997. As the respondent No.2 did not make full payment as per the order passed by the learned JMFC, Dholka w.e.f. 4.11.1997, the applicants submitted the aforesaid application No.322 of 2005 in the Court of learned JMFC, Dholka under section 125(3) of the Criminal Procedure Code. That the learned JMFC, Dholka by its judgment and order dated 13.7.2006 partly allowed the said application directing the respondent No.2 herein to make the payment of arrears of maintenance as per the order passed in the said application and directed to issue distress warrant. Being

aggrieved and dissatisfied with the same, the petitioners preferred Criminal Revision Application No.89 of 2006 for enhancement of the period of imprisonment and the said Criminal Revision Application came to be partly allowed by the learned Additional Sessions Judge, Ahmedabad (Rural) by its judgment and order dated 6.2.2007. Being aggrieved and dissatisfied with both the aforesaid orders, the petitioners have preferred present petition under Article 227 of the Constitution of India.

5. Shri R.R.Patel, learned advocate appearing for the petitioners has submitted that both the Courts below have materially erred in holding and coming to the conclusion that the learned Magistrate cannot pass order sentencing imprisonment for more than one month. He has also further submitted that both the Courts have materially erred in not appreciating the object and scope of the provisions of section 125 of the Criminal Procedure Code. He has submitted that the learned Sessions Judge has simply

relied upon the decision of the Hon'ble Supreme Court mechanically. It is submitted that the said decision of the Hon'ble Supreme Court has been considered by the learned Single Judge of this Court in case of ***Smt. Kalpana Jayeshkumar Thakker V/s. State of Gujarat*** delivered in Criminal Revision Application No.858 of 2004 and therefore, it is requested to allow present petition accordingly.

6. Shri Puwar, learned advocate appearing for the respondent No.2 has submitted that both the Courts below have rightly construed and/or considered the decision of the Hon'ble Supreme Court in case of ***Shahada Khatoon & Others V/s. Amjad Ali & Others*** reported in **2000 (1) Crimes 12 (SC)** and therefore, the same are not required to be interfered with in exercise of powers under Article 227 of the Constitution of India and therefore, it is requested to dismiss the present petition.

7. Shri K.T.Dave, learned APP has requested to pass

an appropriate order considering the unreported decision of this Court in case of ***Smt. Kalpana Jayeshkumar Thakker*** (supra).

8. Heard the learned advocates appearing on behalf of the respective parties.

9. At the outset, it is to be noted that considering the decision of the learned Single Judge of this Court in case of ***Smt. Kalpana Jayeshkumar Thakker*** *(supra),* this Court proposes to remand the matter to the learned trial Court and therefore, this Court is not further narrating the facts in detail. Both the Courts below, more particularly, the learned Revisional Court has heavily relied upon the decision of the Hon'ble Supreme Court in case of ***Shahada Khatoon & Others*** (supra) and has held that the learned Magistrate can impose only one month imprisonment in an application under section 125(3) of the Criminal Procedure Code irrespective of the defaults. However, the said decision has been considered by the learned

Single Judge of this Court in case of ***Smt. Kalpana Jayeshkumar Thakkar*** (supra) and the learned Single Judge of this Court has held that it is an error to hold that the lower Court cannot pass an order of sentence for more than one month for noncompliance of the order passed by the lower Court. The learned Single Judge of this Court in the said decision considering section 125(3) of the Criminal Procedure Code has held that from the plain reading of the said section, it is crystal clear that the Court can impose maximum one month sentence for arrears of one month maintenance amount. Thus, if the default is of more than one month, for each default, a punishment of one month can be imposed. It appears that, therefore, both the Courts below have materially erred in not passing the order of imprisonment of one month qua each default. Under the circumstances, the order passed by both the Courts below are required to be quashed and set aside and the matter is required to be remanded to the learned JMFC, Dholka for passing an appropriate order

afresh considering the decision of this Court in case of ***Smt. Kalpana Jayeshkumar Thakker*** (supra). It will be open for the petitioners to produce the copy of the judgment and order passed by the learned Single Judge of this Court in case of ***Smt. Kalpana Jayeshkumar Thakker*** rendered in Criminal Revision Application No.858 of 2004 before the learned JMFC, Dholka.

10. For the reasons stated above, petition succeeds in part. The order dated 6.2.2007 passed by the learned Additional Sessions Judge, Ahmedabad (Rural) passed in Criminal Revision Application NO.89 of 2006 as well as the order dated 11.9.2006 passed by the learned JMFC, Dholka passed below Exh.27 in Criminal Misc. Application No.322 of 2005 are hereby quashed and set aside and the matter is remanded to the learned JMFC, Dholka for passing afresh order in light of the decision of the learned Single Judge of this Court in case of ***Smt. Kalpana Jayeshkumar Thakker*** (supra). Learned JMFC, Dholka is directed to pass an appropriate order

afresh on remand within a period of 3 months from the date of receipt of this order after giving opportunity to all the concerned parties.

11. Rule is made absolute accordingly to the aforesaid extent.

12. Office is directed to send the writ of this order to the learned JMFC, Dholka forthwith.

[ M.R.Shah, J.]

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